

1 COOLEY LLP
 2 BOBBY GHAJAR (198719)
 (bghajar@cooley.com)
 3 COLETTE GHAZARIAN (322235)
 (cghazarian@cooley.com)
 4 1333 2nd Street, Suite 400
 Santa Monica, California 90401
 Telephone: (310) 883-6400
 5 MARK WEINSTEIN (193043)
 (mweinstein@cooley.com)
 6 KATHLEEN HARTNETT (314267)
 (khartnett@cooley.com)
 7 JUDD LAUTER (290945)
 (jlauter@cooley.com)
 8 ELIZABETH L. STAMESHKIN (260865)
 (lstameshkin@cooley.com)
 9 3175 Hanover Street
 Palo Alto, CA 94304-1130
 Telephone: (650) 843-5000
 10 CLEARY GOTTLIEB STEEN & HAMILTON LLP
 ANGELA L. DUNNING (212047)
 (adunning@cgsh.com)
 11 1841 Page Mill Road, Suite 250
 Palo Alto, CA 94304
 Telephone: (650) 815-4131
 12
 13 [Full Listing on Signature Page]
 14
 15 Counsel for Defendant Meta Platforms, Inc.
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RICHARD KADREY, *et al.*,
 Individual and Representative Plaintiffs,
 v.
 META PLATFORMS, INC., a Delaware
 corporation;
 Defendant.

Case No. 3:23-cv-03417-VC-TSH

**DEFENDANT'S ADMINISTRATIVE MOTION
TO FILE UNDER SEAL OPPOSITION TO
MOTION FOR LEAVE TO FILE THIRD
AMENDED CONSOLIDATED COMPLAINT
AND SUPPORTING EVIDENCE**

Pursuant to Civil Local Rule 79-5, Defendant Meta Platforms, Inc. (“Meta”) respectfully moves this Court for an Order allowing Meta to file under seal portions of its Opposition to Plaintiffs’ Motion for Leave to File Third Amended Consolidated Complaint (“Opposition”) and supporting evidence. Meta respectfully submits that good cause exists for the filing of these documents under seal. The motion is based on the following Memorandum of Points and Authorities and the Declaration of Kyanna Sabanoglu in support of this Administrative Motion to File Under Seal.

Meta requests to seal the following documents in order to protect its confidential business information:

Document	Sealing Request
Opposition	<ul style="list-style-type: none"> • Redacted portions
Declaration of Kathleen Hartnett In Support of Opposition (“Hartnett Declaration”)	<ul style="list-style-type: none"> • Redacted Portions
Exhibit A to Hartnett Declaration	<ul style="list-style-type: none"> • Entire document
Exhibit B To Hartnett Declaration	<ul style="list-style-type: none"> • Entire document
Exhibit C to Hartnett Declaration	<ul style="list-style-type: none"> • Entire document
Exhibit D to Hartnett Declaration	<ul style="list-style-type: none"> • Entire document
Exhibit E to Hartnett Declaration	<ul style="list-style-type: none"> • Entire document
Exhibit F to Hartnett Declaration	<ul style="list-style-type: none"> • Entire document
Exhibit G to Hartnett Declaration	<ul style="list-style-type: none"> • Entire document
Exhibit H to Hartnett Declaration	<ul style="list-style-type: none"> • Entire document

I. LEGAL ARGUMENT

Though the presumption of public access to judicial proceedings and records is strong, it “is not absolute.” *Nixon v. Warner Commc’ns. Inc.*, 435 U.S. 589, 598 (19787). The Ninth Circuit treats documents “attached to dispositive motions differently from records [i.e., documents] attached to non-dispositive motions.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006); *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098 (9th Cir. 2016). For

1 non-dispositive motions, such as Plaintiffs' Motion to Amend Case Management Schedule (Dkt.
 2 193), the "good cause" standard applies. *OpenTV v. Apple*, No. 14-cv-01622-HSG,
 3 2015 WL 5714851, at *2 (N.D. Cal. Sept. 17, 2015); *Kamakana*, 447 F.3d at 1180 ("A 'good
 4 cause' showing will suffice to seal documents produced in discovery."). The Federal Rules afford
 5 district courts "flexibility in balancing and protecting the interests of private parties." *Kamakana*,
 6 447 F.3d at 1180; *DSS Tech. Mgmt. v. Apple*, No. 14-cv-05330-HSG, 2020 WL 210318, at *8
 7 (N.D. Cal. Jan. 14, 2020), *aff'd*, 845 F. App'x 963 (Fed. Cir. 2021) (finding good cause to seal
 8 "confidential business and proprietary information").

9 The exhibits to the Hartnett Declaration consist of Meta's highly confidential internal
 10 documents and deposition testimony by Meta's employees concerning Meta's processes in
 11 developing its generative AI offerings, all of which have been designated "Highly Confidential –
 12 Attorneys' Eyes Only" under the Stipulated Protective Order (Dkt. 90). Many of these documents
 13 contain detailed technical information and trade secret information, including regarding Meta's use
 14 and processing of datasets to train its Llama models.

15 The portions of the Hartnett Declaration that Meta seeks to redact describe and quote from
 16 the exhibits attached to the declaration, as well other documents produced by Meta that have been
 17 designated "Highly Confidential – Attorneys' Eyes Only." The portions of the Opposition that
 18 Meta seeks to redact similarly reflect, refer to, and discuss the information contained in the highly
 19 confidential exhibits to the Hartnett Declaration, as well as the exhibits to the Declaration of Joshua
 20 M. Stein ("Stein Declaration"), filed with Plaintiffs' Motion for Leave, and which Meta has
 21 separately sought to be sealed (Dkt. 310).

22 As this information is highly confidential, Meta must request sealing of the documents and
 23 redaction portions listed above. Meta takes steps to carefully protect the confidentiality of
 24 information of this sort because the disclosure of such information has the potential to cause
 25 significant competitive injury to Meta. *See, e.g., Space Data Corp. v. Alphabet Inc.*, No. 16-CV-
 26 03260-BLF, 2019 WL 285799, at *1 (N.D. Cal. Jan. 22, 2019) (finding information regarding
 27 party's confidential and proprietary technical information sealable). To the extent the materials
 28 Meta seeks to seal include non-confidential background information, sealing of such information

1 within the context of Meta's Opposition and proposed amended complaint is necessary to maintain
 2 the confidentiality of Meta's protected information, as the discussion necessarily implies conduct
 3 by Meta which is highly sensitive, non-public, and which Meta has taken steps to keep confidential.
 4 Accordingly, this sealing request is critical to protecting Meta's confidential sensitive technical and
 5 competitive information.

6 The specific basis for sealing these materials is outlined in the accompanying declaration
 7 of Meta's Associate General Counsel, IP Litigation, Kyanna Sabanoglu. As outlined in Ms.
 8 Sabanoglu's declaration, disclosure of the protected information contained in these materials would
 9 work competitive harm to Meta if this information is publicly disclosed. The Parties' sealing
 10 requests and proposed redactions are narrowly tailored to include only that information which
 11 would cause specific, articulable harm, as identified in Ms. Sabanoglu's declaration. In each
 12 instance, the harm to Meta outweighs the public's interest in disclosure. *See, e.g., In re iPhone*
 13 *App. Litig.*, No. 11-md-02250-LHK, 2013 WL 12335013, at *2 (N.D. Cal. Nov. 25, 2013) (granting
 14 motion to seal where the defendant's interest in "maintaining the confidentiality of information
 15 about its technology and internal business operations" outweighed that of the public in accessing
 16 such documents).

17 II. CONCLUSION

18 For the foregoing reasons, Meta respectfully requests that the Court grant Meta's
 19 Administrative Motion to Seal.

20
 21
 22
 23
 24
 25
 26
 27
 28

1 Dated: December 11, 2024

COOLEY LLP

3 By: /s/Kathleen Hartnett

4 Bobby Ghajar
 5 Philip Morton
 6 Mark Weinstein
 7 Kathleen Hartnett
 8 Matthew Brigham
 Judd Lauter
 Liz Stameshkin
 Colette Ghazarian
 Juan Pablo Gonzalez
 Cole Poppell

9 LEX LUMINA PLLC
 10 Mark A. Lemley

11 CLEARY GOTTLIEB STEEN &
 HAMILTON LLP
 12 Angela L. Dunning

13 Attorneys for Defendant
 14 META PLATFORMS, INC.

15 *Full Counsel List*

16 COOLEY LLP
 17 PHILLIP MORTON (*pro hac vice*)
 (pmorton@cooley.com)
 COLE A. POPPELL (*pro hac vice*)
 (cpoppell@cooley.com)
 1299 Pennsylvania Avenue, NW, Suite 700
 Washington, DC 20004-2400
 Telephone: (202) 842-7800

18 COOLEY LLP
 19 MATTHEW BRIGHAM (191428)
 (mbrigham@cooley.com)
 JUAN PABLO GONZALEZ (334470)
 (jgonzalez@cooley.com)
 3175 Hanover Street
 20 Palo Alto, CA 94304-1130
 Telephone: (650) 843-5000

21 LEX LUMINA PLLC
 22 MARK A. LEMLEY (155830)
 (mlemley@lex-lumina.com)
 23 745 Fifth Avenue, Suite 500
 New York, NY 10151
 Telephone: (646) 898-2055

24 311835422

25
26
27
28